UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/471,971	12/23/1999	ALBHY GALUTEN	9386/1F051-U	8165

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DARBY & DARBY PC
805 THIRD AVENUE
NEW YORK, NY 10022

EXAMINER
POND, ROBERT M

ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/471,971	GALUTEN ET AL.
	Examiner	Art Unit	
	Robert M. Pond	3625	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>*17 November 2004*</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *3-91* is/are pending in the application.

     4a) Of the above claim(s) *38-41,77-80,82,84 and 89-91* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *3-37, 42-76, 81, 83, and 85-88* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a)☐ All   b)☐ Some *   c)☐ None of:

         1.☐ Certified copies of the priority documents have been received.

         2.☐ Certified copies of the priority documents have been received in Application No. _____.

         3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I in the reply filed on 17 November 2004 is acknowledged. The traversal is on the ground(s) that Groups I, III, and IV are not separate inventions. This is found to be persuasive because Groups I, III, and IV are not separate inventions. The requirement is still deemed proper and is therefore made FINAL to combine Groups I, III, and IV.

Response to Amendment

The Applicant amended Claims 3, 33, 36, 42-51, 53-76, 81, and 83, and newly added Claims 90 and 91. Claims 38-41, 77-80, 82, 84, 89, 90, and 91 were withdrawn. All pending claims (3-37, 42-76, 81, 83, and 85-88) were examined in this final Office Action necessitated by amendment.

Response to Arguments

Applicant's arguments filed 27 May 2004 have been fully considered but they are not persuasive. Liquid Audio teaches dynamic updating of upstream business parameters. Liquid Audio teaches the Liquid License Center enforcing licenses between the key parts of the system and the Liquid Server's flexible design allowing the artist to send dynamic product and promotional information comprising sale price, tour schedule, discounts, and coupons. The Examiner

firmly believes the teachings as noted above are addressing dynamic updating of

business parameters.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as
> set forth in section 102 of this title, if the differences between the subject matter sought to be
> patented and the prior art are such that the subject matter as a whole would have been obvious at
> the time the invention was made to a person having ordinary skill in the art to which said subject
> matter pertains. Patentability shall not be negatived by the manner in which the invention was
> made.

1.   **Claims 3-4, 12-24, 29, 42-43, 51-55, 57-63, 67, 70, 81, and 83 are rejected**

under 35 USC 103(a) as being unpatentable over Liquid Audio (Paper #26,

PTO-892, Item: U), in view of Wiser et al. (Paper #26, patent number

6,385,596 hereinafter referred to as "Wiser").

Liquid Audio teaches a secure Internet music on-demand delivery system and

method that allow online consumers to purchase or sample music titles via a

media player. Liquid Audio further teaches the online music delivery system

comprising:

- an Internet mastering and encoding system for publishing copy protected

    music for delivery via the Internet that uses encryption to secure the

    transmission to a media player, and implements watermarking to guard

    against piracy (see Item U; page 1-2),

- a music server where the audio and media assets are stored, "served up" to online consumers, and monitored; the music sever utilizes standard protocols to delivery high-quality, scalable, Dolby-encoded audio and media over IP networks, provides simultaneous audio streams, and provides a turnkey solution for asset management, copyright protection, rights tracking and reporting, and all other aspects of transaction-based music commerce; he music server links additional information pertaining to the music track (e.g. sale price, tour schedule, discounts and coupons) that can be requested via the media player (see Item: U, pages 2, 8-9, and 11),

- media player software that resides in a consumer's computer that lets the consumer preview or purchase CD quality music from the Internet; the media player allows the consumer to see album graphics, lyrics, liner notes and promotions while listening to superior sound provided by Dolby Digital Technology; the music player allows the consumer to purchase a CD the traditional way, or purchase sound tracks delivered over the Internet in audio streams; the music player supports database functions, and provides a music organizer that allows the consumer to display music files by artist, song title, play time, status, and audio quality, sort files by multiple criteria, play songs by clicking on their titles, and compile favorite song lists; the media player decrypts received tracks and protects both the record label and artist's rights (see Item: U, pages 2 and 12-13),

- the use of a password protected music passport that authorizes the consumer to purchase and use sound tracks delivered to the media player; the music passport includes consumer name, address, and credit card information; consumers downloading the media player free of charge at the click of a button or from other sites using the Liquid Audio delivery system and sampling sound tracks (see Item: U, pages 15 and 19), and

- Liquid License Center being a trusted third-party system for delegating and enforcing licensing between the key parts of the system-licenses for consumers using the music player, distributors using the music distribution server, and publishers using the mastering tools (please note examiner's interpretation: enforcing predefined business rules) (see Item: U, page 3),

- Liquid License Center enforces licenses between the key parts of the system; Liquid Server's flexible design allows the artist to send dynamic product and promotional information comprising sale price, tour schedule, discounts, and coupons (please note examiner's interpretation: dynamically updating business parameters upstream) (Item: U, page 2).

Liquid Audio teaches all the above as noted under the 103(a) rejection, but does not disclose the server receiving requests from the media player. Wiser teaches the system and method of Liquid Audio's music download web site. Wiser teaches a) the media player as the mechanism by which the consumer plays back purchased or previewed audio data, and b) the delivery server as the

mechanism by which the media data files are delivered to consumers via the

media player, and further teaches the delivery server receiving requests from the

web browser-based media player and responding to media player requests (see

at least abstract; Fig. 8, col. 9, line 53 through col. 10, line 16). Therefore it would

have been obvious to one of ordinary skill in the art at time of the invention to

modify the method of Liquid Audio to disclose specifics on the delivery server's

interaction with the media player as taught by Wiser, in order for consumers to

better understand how the media player and delivery server interact, and thereby

attract more consumers to the music distribution service.

Liquid Audio teaches all the above as noted under the 103(a) rejection and

teaches credit card payment, but does not disclose payment alternatives. Wiser

teaches all the above as noted under the 103(a) rejection and teaches credit,

debit, and digital cash for payment (see at least col. 2, lines 48-54). Therefore it

would have been obvious to one of ordinary skill in the art at time of the invention

to modify the method of Liquid Audio to include payment alternatives as taught

by Wiser, in order to support consumer payment preferences, and thereby attract

more consumers to the music distribution service.

Liquid Audio teaches all the above as noted under the 103(a) rejection and

teaches instance of use based on time duration (Item: U, page 26), but does not

teach paying an amount for each instance of use. Wiser teaches all the above as

noted under the 103(a) rejection and teach paying an amount for each instant of

use (see at least Fig. 8). Therefore it would have been obvious to one of ordinary

skill in the art at time of the invention to modify Liquid Audio to include payment

instance for each use as taught by Wiser, in order to support consumer

purchasing preferences, and thereby attract more consumers to the music

distribution service.

Liquid Audio teaches all the above as noted under the 103(a) rejection and

teaches presenting offers for online music, but does not disclose formulating

offers. Wiser teaches all the above as noted under the 103(a) rejection and

teaches a) enforcing licensing, and b) displaying in Liquid Audio's Liquid Music

Player CD web page and Liquid Audio's "Preview for Purchase" web page one or

more offers to the consumer for purchase by displaying the price per song

(please note examiner's interpretation: offers are formulated to be able to display

the offer) (see at least abstract; Fig. 8; Fig. 14; col. 10, lines 1-16; col. 14, lines

40-47). Therefore it would have been obvious to one of ordinary skill in the art at

time of the invention to modify the method of Liquid Audio to disclose formulating

offers as taught by Wiser, in order to display to the consumer offers consistent

with rights parameters, and thereby attract content creators to the service.

2.   **Claims 8-11 and 47-50 are rejected under 35 USC 103(a) as being**

unpatentable over Liquid Audio (Paper #26, PTO-892 Item: U) and Wiser

(Paper #26, patent number 6,385,596), as applied to Claims 4 and 43, further

in view of Official Notice (Paper #26, regarding well within the skill

**hereinafter referred to as "ON1") and Official Notice (Paper #26, regarding
well within the skill hereinafter referred to as "ON2").**

Liquid Audio and Wiser teach all the above as noted under the 103(a)
rejection and teach a) dynamic updating of rights data, b) enforcing rights
protection, c) delivering data to the consumer's media player in a secure format,
and d) displaying rights data in response to a request by displaying the user's
right to purchase a song for $0.99 or the user's right to receive a free preview
(Wiser: see Fig. 8), and further teach reporting usage and making royalty
payments to the artist based on rights usage, but do not specifically disclose
generating rights data. The Examiner takes the position that it would have been
obvious to one of ordinary skill in the art at time of the invention to disclose
generating rights data, since it is well within the level of skill to ascertain that
rights information displayed to the buyer is the result of generating rights data.

Liquid Audio and Wiser teach all the above as noted under the 103(a)
rejection and teach a) the system responding to consumer requests, and b)
authenticating a media player (Wiser et al.: col. 3, lines 36-38), and further teach
an icon on Liquid Audio's web page (Item: U, page 25) used by the consumer to
select a media player for download to the consumer's computer, but do not
disclose the server detecting a request for the media player and downloading the
player. The Examiner takes the position that it would have been obvious to one
of ordinary skill in the art at time of the invention to disclose detecting a request
for the media player and downloading the player, since it is well within the skill to

ascertain that the action by a customer to select a media player via the download

icon will be detected by the system resulting in the downloading of the media

player.

3.   **Claims 5, 25-28, 30-37, 44, 56, 64-66, 68-69, 71-75, and 87 are rejected**

under 35 USC 103(a) as being unpatentable over Liquid Audio (Paper #26,

PTO-892, Item: U) and Wiser (Paper #26, patent number 6,385,596), as

applied to Claims 3 and 42, further in view of Ginter et al. (Paper # 10,

patent number 5,910,987 hereinafter referred to as "Ginter").

Liquid Audio and Wiser teach all the above as noted under the 103(a)

rejection and further teach a) the Liquid LicenseCenter being a trusted third-party

system for delegating and enforcing licensing between the key parts of the

system-licenses for consumers using the music player, b) distributors using the

music distribution server, and c) publishers using the mastering tools (see Item:

U, page 3), and further teach content rights management and validating

consumer access to rights protected music content, but do not disclose details on

how this accomplished. Ginter teaches systems and methods for secure

transaction management and electronic rights protection, and secure chains of

handling and controlling information content (e.g. audio, catalog) and information

employed to regulate the use of such content (see at least abstract; col. 1, lines

1-34; col. 3, lines 50-55; col. 4, lines 1-67; col. 5, lines 1-44; col. 6, lines 1-67;

col. 18, line 45). Ginter further teaches:

- content containers, container content objects, databases, and metadata,

- display interfaces, a web browser, and database linkage via dynamic links
  supported by URLs (see at least col. 102; lines 11-17; col. 290, lines 32-
  34; col. 289, lines 14-19),

- customized interfaces based on security levels (see at least Fig. 7 (602,
  614); col. 77, lines 12-29),

- customized access rights and delegation of access rights implemented
  with a very flexible and extensible content permission rights and user
  identification scheme aligned by individuals, installations, by groups, by
  function, and by hierarchical identification (see at least Fig 5b (808); Fig.
  26 (808); col. 13, lines 54-60; col. 25, lines 31-38; col. 59, lines 1-18; col.
  259, lines 31-67; col. 260, lines 1-10; col. 274, lines 23-67; cols. 275-278),

- formats including but not limited to text, video, audio, graphics, and
  scanned images (see at least Fig. 5b (304); Fig. 7 (626); col. 51, lines 15-
  20; col. 58, lines 59-67; col. 131, line 58 through col. 132, line 12; col. 257,
  lines 13-25; col. 291, lines 64-65),

- object creation and control structures, users creating and partitioning VDE
  objects by placing meta-data (e.g. author's name, creation date) into them,
  and assigning rights associated with them and/or object content (e.g.
  publisher and/or content creator respectively) (see at least Fig. 5a (300);
  col. 259, line 30-46),

- permission records specifying various control relationships between objects and users, supporting single access (e.g. one-to-one relationship between a user and a right user) and a group access (any number of users may be authorized as a group) (see at least col. 259, line 65 through col. 260, line 6),

- using media players and multimedia players (col. 59, lines 53-67), and

- group-based and role-based access to content (see at least col. 278, lines 21-25), and by example, teach the sharing of personalized content among a group of or peers working for a law firm (see at least col. 274, line 23 through col. 277, line25), and

- electronic agreements and rights protection, contract agreements with content creators, content providers, other sources of content, rules and control pertaining to agreements, validation of content offers, validation tagging, user rights tables, and object registries (see at least Fig. 2 (100); Fig. 2a; col. 2, lines 47-60; col. 4, line 36; col. 5, lines 38-39; col. 6, line 45; col. 8, lines 16-45; col. 8, line 66 through col. 9, line 13; col. 9, lines 40-65; col. 10, lines 41-47; col. 14, lines 14-48; col. 40, lines 18-29; col. 44, line 52 through col. 46, line 64; col. 53, line 18 through col. 56, line 7; col. 71, lines 20-24; col. 151, 26 through col. 158, line 56; col. 241, line 5 through col. 254, line 34; col. 297, lines 7-15).

Therefore it would have been obvious to one of ordinary skill in the art at time

of the invention to modify the system and method of Liquid Audio and Wiser to

disclose offer validation, rights data generation specifics, content usage and

tracking, and contractual enforcement as taught by Ginter, in order to more

completely convey the underlying methods of content generation, distribution,

and tracking, and thereby encourage content authors and creators to use the

music distribution service.

Liquid Audio and Wiser teach all the above as noted under the 103(a)

rejection but do not disclose sending a content reference from a first consumer to

a second consumer, sending the second consumer selected information,

determining whether the second consumer is authorized, and rendering the

information to the authorized second consumer. Ginter teaches all the above as

noted under the 103(a) rejection and further teaches a) launching content in the

form of traveling objects supplied by a content provider to an end-user who can

then copy or pass along the content to other end-user parties without requiring

the direct participation of a content provider to register and/or initialize the

content use (see at least Fig. 19; col. 24, lines 25-62; col. 128, line 38 through

col. 131, line 57, col. 262, lines 41-55), and b) passing traveling objects along to

a second consumer for content evaluation purposes (see at least col. 131, lines

55-60). Therefore it would have been obvious to one of ordinary skill in the art at

time of the invention to modify the system and method of Liquid Audio and Wiser

to include traveling objects as taught by Ginter, in order to create additional

content sales opportunities for the electronic commerce site.

Liquid Audio and Wiser teach all the above as noted under the 103(a)

rejection and teach a) storing the consumer's credit card information in the

consumer's passport, and b) payment alternatives to credit cards, and further

teach usage instances, but do not disclose other usage instances. Ginter teaches

payment alternatives for usage instances (pay per use, unlimited use, flat rate)

(see at least Fig. 4 ("How to Pay," "Cost of Unit"); Fig. 25; col. 142, lines 47-50).

Therefore it would have been obvious to one of ordinary skill in the art at time of

the invention to modify the system and method of Liquid Audio and Wiser to

include payment alternatives and instance alternatives as taught by Ginter, in

order to provide desirable and competitive approaches to content delivery, usage

instance, and payment, and thereby attract content owners, content providers,

and consumers to the electronic commerce site.

4.   **Claims 6-7, 37, 45-46, 76, and 88 are rejected under 35 USC 103(a) as**

being unpatentable over Liquid Audio (Paper #26, PTO-892, Item: U), Wiser

(Paper #26, patent number 6,385,596), and Ginter (Paper #10, patent

number 5,910,987), as applied to Claims 3, 5, 42, 44, and 87, further in view

of Official Notice (regarding well within the skill hereinafter referred to as

"ON3").

Liquid Audio, Wiser, and Ginter teach all the above as noted under the 103(a) rejection and teach a) providing free music samples, b) consumers sampling sound tracks, c) validating a user content request at various phases of content access, but do not disclose providing default or alternative content if the offer is to be invalid. The Examiner takes the position it would have been obvious to one of ordinary skill in the art at time of the invention to disclose offering a default of alternative offer, since it is well within the skill to ascertain that sellers of products (e.g. music stores) who do not have a particular product to sell as requested by a potential customer would suggest an alternative product or default offering (also known as a standard offering) in order to attempt a sale rather than let the customer spend money at a competing store.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.
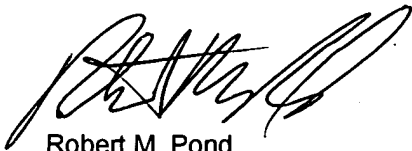
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 703-605-4253. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

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direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

free).

Robert M. Pond
Primary Examiner
February 7, 2005